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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,863	09/02/2004	Teiichi Nishimura	00682P00680US	4700
32116 7590 07/23/2007 WOOD, PHILLIPS, KATZ, CLARK & MORTIMER 500 W. MADISON STREET SUITE 3800 CHICAGO, IL 60661			EXAMINER PARSLEY, DAVID J	
			ART UNIT 3643	PAPER NUMBER
			MAIL DATE 07/23/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/506,863	<b>Applicant(s)</b> NISHIMURA ET AL.	
	<b>Examiner</b> David J. Parsley	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21, 26-33, 40, 41 and 43-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21, 26-33, 40, 41 and 43-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **Detailed Action**

### ***Amendment***

1. This office action is in response to applicant's amendment dated 5-11-07 and this action is final.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-14, 18, 20, 27/1, 28/1, 29/1, 31/1, 32/1, 44/1, 45/1, 46 and 48-49 are

rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,095,647 to Zobebe et al.

Referring to claim 1, Zobebe et al. discloses a pest controller comprising a portable container – at C, holding a chemical substance therewithin – see column 5 lines 63-68 and column 6 lines 1-7, the container attachable to a user so as to follow movement of a user without the portable container having to be held by a user – see figures 1-4 where the container – at C, is of a size that can be placed in a backpack worn by a user, wherein the container comprises a substance exposing portion – at the top of C and at 14'' and at 20, for exposing the chemical

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substance held therein to atmospheric air – via item 14, and a cover – at 17 – see figures 1-3, for sealing the substance exposing portion – see figure 4, the chemical substance containing an active ingredient with a pest controlling effect – see column 5 lines 63-68 and column 6 lines 1-7, and the active ingredient being volatilizable at a normal atmospheric temperatures and as an incident of being exposed to atmospheric air – see figures 1-4 and column 5 lines 63-68 and column 6 lines 1-7.

Referring to claim 2, Zobe et al. discloses the chemical substance is contactable with atmospheric air at the substance exposing portion so as to be released into the air therefrom when the cover is open – see at the top of C and 14'' in figures 4-5.

Referring to claim 3, Zobe et al. discloses the substance exposing portion is provided with an applicator – at 14, for applying the chemical substance onto a body – see figures 4-5 where item 14 is capable of performing the function of applying the chemical substance to a body.

Referring to claim 4, Zobe et al. discloses the substance exposing portion is constituted by a member having a porous bundle – at 14, a fibrous bundle – at 14, a member with a through hole – at 20, so that the chemical substance is exposed on a surface thereof – see figures 4-5.

Referring to claim 6, Zobe et al. discloses the chemical substance is directly held within the container – see at C in figure 4.

Referring to claim 7, Zobe et al. discloses the chemical substance has a fluidity – see column 5 lines 63-68 and column 6 lines 1-7, and wherein the container further comprises a substance storage – at the bottom of C, containing the substance – see figure 4, and a substance lead-out member – at 14, provided between the substance storage and the substance exposing

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portion – at 20, so as to lead the substance out of the substance storage through the substance lead out member to the substance exposing portion – see figures 4-5.

Referring to claim 8, Zobe et al. discloses the container – at C, accommodates a substance retaining member – at 14, the chemical substance being capable of flowing and retained in the substance retaining member – see at 14 in figures 4-5.

Referring to claim 9, Zobe et al. discloses the substance retaining member – at 14, is made of fiber – see column 3 lines 25-68.

Referring to claim 10, Zobe et al. discloses the container comprises a storage tank – at the bottom of C, and a temporary receptacle – at 19, for the chemical substance – see figures 4-5.

Referring to claim 11, Zobe et al. discloses the container is of a cylindrical shape – see at C in figure 4, wherein the substance exposing portion – at 14,20, is placed at an end of the container of cylindrical shape – see figures 4-5.

Referring to claim 12, Zobe et al. discloses the container further comprises a container body – at C, holding the chemical substance therewithin – see figure 4, wherein the body accommodates a substance retaining member – at 14, adapted to absorbing the chemical substance – see figures 4-6, the substance retaining member soaked with the chemical substance – see figures 5-6, and wherein the body is provided with the substance lead out member – at 20,21, adapted to leading out the chemical substance out of the body – see figures 4-6, a proximal part of the substance lead out member being in contact with the substance – via item 14 as seen in figures 5-6, and a distal part of the lead out member – at 21, being exposed out of the body – see figure 4.

Referring to claim 13, Zobe et al. discloses the substance exposing portion is adapted to adjusting an exposing area of the chemical substance – see figures 4-6 where the amount of item 14 at 14'' disposed outside the container – at C, can be adjusted in that the distance – S can be made to different lengths.

Referring to claim 14, Zobe et al. discloses the substance exposing portion has a window – at the top of 20,21, an opening are of which is changeable – by being open when the wick – at 14 is not in item 20,21 and then being closed when the wick – at 14 is placed into item 20.

Referring to claim 18, Zobe et al. discloses the body – at C, is provided with a substance lead out member – at 19,20,21, adapted to leading the chemical substance out of the body – see figures 4-6, and wherein to the substance lead out member a substance releasing member – at 14,14'', is separately provided is attachable – see figures 4-6, the substance releasing member configured and sufficiently flexible – see column 3 lines 25-34 that is capable of being wound up or folded to be compacted during non-use – see column 3 lines 25-34 where the substance releasing member is made of a flexible material that can be wound or folded up.

Referring to claim 20, Zobe et al. discloses the container has a deformable portion – at 14, so that the chemical substance inside the container will be brought out by pressing the deformable portion – see at 14 in figures 4-6.

Referring to claim 27/1, Zobe et al. discloses the container further comprises a container body – at C, holding the chemical substance therewithin, and a cap – at 17,18, being separable from the body and being attached to the body so as to constitute the cover – see figure 4.

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Referring to claim 28/1, Zobebe et al. discloses the container is equipped with a holder – at 16, for attaching the controller to a body – at 19-21 – see figures 4-6.

Referring to claim 29/1, Zobebe et al. discloses the container – at 19, has a tabular shape – see figures 5-6, and wherein the substance exposing portion is of a planar shape – see at 14 in figures 4-6.

Referring to claim 31/1, Zobebe et al. discloses the container – at C, is adapted to be attached to clothes – via a person holding or touching the container C in which the container would be attached to the clothes of the person via intervening portions of the person's body such as hand and arms.

Referring to claim 32/1, Zobebe et al. discloses the container has an attaching member – at 16, for attaching the controller to a body – at 18 – see figure 4.

Referring to claim 44/1, Zobebe et al. further discloses opening the cover – at 17,18, of the controller at a spot for pests so as to volatize the chemical substance containing the active ingredient into the air from the substance exposing portion – at 14, thereby getting rid of harmful pests – see figures 4-6.

Referring to claim 45/1, Zobebe et al. further discloses contacting the pest controller – at 14'', with a spot – at 5 and/or 20,21, for pests to apply the chemical substance on the spot – at 5 and/or 20/21, as seen in figures 1 and 4-6, so as to volatize the chemical substance containing the active ingredient into the air thereby getting rid of harmful pests – see figures 1 and 4-6.

Referring to claim 46, Zobebe et al. further discloses the pest controller further comprises a lead-out tube – at 19, extending within the container – at C – see figures 4-6, that communicates the chemical substance towards the substance exposing portion – see figures 4-6.

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Referring to claim 48, Zobe et al. further discloses holding the pest controller in the hand of the user and opening the cover – at 17,18, of the pest controller at a spot for pests so as to volatilize the chemical substance containing the active ingredient into the air from the substance exposing portion, thereby getting rid of harmful pests – see figures 1-4.

Referring to claim 49, Zobe et al. further discloses holding the pest controller in the hand of a user and contacting the pest controller with a spot for pests to apply the chemical substance on the spot so as to volatilize the chemical substance containing the active ingredient into the air, thereby getting rid of harmful pests – see figures 1-4.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Patent No. 4,286,754 to Jones in view of Zobe et al.

Referring to claim 1, Jones discloses a device comprising a portable container – at 16, holding a chemical substance therewithin – see column 4 lines 18-68 and column 5 lines 1-64, the container attachable to a user so as to follow movement of a user without the portable container having to be held by a user – see figures 1-2 where the container is of a size that can be placed in a backpack that can be worn by the user, wherein the container comprises a substance



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exposing portion – at the top of 16 and – at 13, for exposing the chemical substance held therein to atmospheric air – see figure 2, and a cover – at the top of 16, for sealing the substance exposing portion – see figure 2, the chemical substance containing an active ingredient which is volatilizable at a normal atmospheric temperature and as an incident of being exposed to atmospheric air – see column 4 lines 18-68 and column 5 lines 1-64. Jones does not disclose the active ingredient has a pest controlling effect. Zobelet al. does disclose the active ingredient has a pest controlling effect see column 5 lines 63-68 and column 6 lines 1-7. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Jones and add the active ingredient having a pest controlling effect of Zobelet al., so as to allow for the device to protect against unwanted insects/pests.

Referring to claim 5, Jones as modified by Zobelet al. further discloses the substance exposing portion – at 13, is constituted by a ball member – see at 18-22 in figure 3 of Jones.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zobelet al. as applied to claim 1 above, and further in view of U.S. Patent No. 5,501,033 to Wefler.

Referring to claim 15, Zobelet al. further discloses a substance lead out member – at 14, adapted to lead the chemical substance out of the body – see figures 4-6. Zobelet al. does not disclose a valve system being open by a predetermined operation, whereby the chemical substance inside creeps through the substance lead out member so as to be exposed out of the body. Wefler does disclose a valve system – at 28,30,40-46, being open by a predetermined operation – see at 46 in figures 3-4, whereby the chemical substance inside creeps through the substance lead out member – at 18, so as to be exposed out of the body – see via 20 in figures 3 and 4. Therefore it would have been obvious to one of ordinary skill in the art to take the device

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of Zobe et al. and add the valve of Wefler, so as to control the flow of the liquid substance through the device.

Referring to claim 16, Zobe et al. does not disclose the chemical substance has a proximal end and the substance holder having a follower at the proximal end of the chemical substance moving according to a consumption of the chemical substance. Wefler does disclose the chemical substance has a proximal end – see at 48 in figures 3-4, the substance holder having a follower – at 46, at the proximal end of the chemical substance – depending on the level of the chemical substance in the device, moving according to a consumption of the chemical substance – see figures 3-4 and column 4 lines 11-58. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Zobe et al. and add the follower of Wefler, so as to control the flow of the liquid substance through the device.

Referring to claim 17, Zobe et al. as modified by Wefler does not disclose the follower is gel. However, applicant does not disclose that the follower being made of gel is critical to the operation of the invention and therefore it is deemed that the device of Zobe et al. as modified by Wefler is capable of performing equally as well with the follower being made of gel. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Zobe et al. as modified by Wefler and add the follower made of gel, so as to control the flow of the liquid substance through the device.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zobe et al. as applied to claim 1 above, and further in view of Lhoste et al.

Referring to claim 19, Zobe et al. discloses a container body – at C, holding the chemical substance therewithin – see figure 4, and an attachment – at 17,18, detachable from the

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body and attachable to the body in at least two ways of attachment, so as to hold a liquid chemical substance with fluidity therewithin and wherein the body is provided with a substance lead out member – at 14, adapted to leading the chemical substance out of the body – see figure 4, the attachment being provided with a cover – at 17, for sealing the substance lead out member – see figure 4, and a substance releasing member – at 14'', for helping releasing the chemical substance – see figures 4-6, the substance lead out member being sealed by attaching the attachment to the container in one particular position – see the dotted lines – at 17-18 in figure 4, and the chemical substance being supplied to the substance releasing member from the substance lead out member so as to be exposed to ambient air by attaching the attachment to the container body in another particular position – such as being unthreaded to the upper portion of C at item 16 as seen in figure 4. Zobelet al. does not disclose the chemical substance being supplied to the substance releasing member from the substance lead-out member so as to be exposed to ambient air by attaching the attachment to the container body in another particular position, the attachment having spaced ends each of which is selectively attachable to the container body, the attachment in the one particular position with one of the spaced ends of the attachment attached to the container body, the attachment body in the another particular position with the other of the second ends of the attachment attached to the container body. Lhoste et al. does disclose the chemical substance being supplied to the substance releasing member – at M, from the substance lead-out member – at 1, so as to be exposed to ambient air by attaching the attachment – at 10, to the container body – at 11, 16, in another particular position – see figures 4 and 7, the attachment having spaced ends – see at either end of item 10 in figure 5, each of which is selectively attachable to the container body – see figures 4 and 7, the attachment in the one particular

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position with one of the spaced ends of the attachment attached to the container body – see figures 4 and 7, the attachment body in the another particular position with the other of the second ends of the attachment attached to the container body – see figures 4 and 7. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Zobelet al. and add the attachment member of Lhoste et al., so as to allow for the release of the chemical substance to be selectively controlled by the user.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zobelet al. as applied to claim 1 above, and further in view of U.S. Patent No. 6,783,081 to Pedrotti et al.

Referring to claim 21, Zobelet al. does not disclose the container has a pressurizer for increasing the inner pressure of the container so that the chemical substance is brought out. Pedrotti et al. does disclose a pressurizer – at 7, for increasing the inner pressure of the container so that the chemical substance is brought out – see figure 3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Zobelet al. and add the pressurizer of Pedrotti et al., so as to allow for the chemical substance to be quickly moved from the device to the outside of the device.

Claim 26/1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zobelet al. as applied to claim 1 above, and further in view of U.S. Patent No. 5,647,164 to Yates.

Referring to claim 26/1, Zobelet al. does not disclose a heater for heating the chemical substance. Yates does disclose a heater – see column 5 lines 25-31. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Zobelet al. and add the heater of Yates, so as to allow for the chemical substance to more quickly evaporate.

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Claim 30/1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zobeles et al. as applied to claim 1 above, and further in view of U.S. Patent No. 4,621,768 to Lhoste et al.

Referring to claim 30/1, Zobeles et al. does not disclose the cover is a deformable sheet, that is removable from the container. Lhoste et al. does disclose a cover – at 3, being a deformable sheet that is removable from the container – at 1 – see figures 4 and 7 and column 2 lines 56-68 where the cover snaps onto the container and thus is deformed to be removed and attached to the container.

Claims 33/1, 40/1, 41/1 and 43/1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zobeles et al. as applied to claim 1 above.

Referring to claim 33/1, Zobeles et al. does not disclose the container is made of a biodegradable resin. However, it would have been obvious to one of ordinary skill in the art to take the device of Zobeles et al. and add the container made of a biodegradable resin, so as to allow for the device to be more environmentally friendly.

Referring to claim 40/1, Zobeles et al. does not disclose the active ingredient has a vapor pressure at 25 degrees C, within a range of  $1 \times 10^{-5}$  mmHg to  $5 \times 10^{-3}$  mmHg. However, it would have been obvious to one of ordinary skill in the art to take the device of Zobeles et al. and add the active ingredient having a vapor pressure within the range of  $1 \times 10^{-5}$  mmHg to  $5 \times 10^{-3}$  mmHg, so as to allow for the active ingredient to be easily vaporizable.

Referring to claim 41/1, Zobeles et al. does not disclose the active ingredient is a pyrethroid compound. However, it would have been obvious to one of ordinary skill in the art to take the device of Zobeles et al. and add the active ingredient being a pyrethroid compound, so as to allow for the device to be harmful to pests.

Referring to claim 43/1, Zobelet al. does not disclose the chemical substance contains a sublimable dyestuff. However, it would have been obvious to one of ordinary skill in the art to take the device of Zobelet al. and add the chemical substance being a sublimable dyestuff, so as to allow for the device to be effective against pests.

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zobelet al. as applied to claim 46 above, and further in view of Lhoste et al.

Referring to claim 47, Zobelet al. does not disclose the lead out tube comprises an inner tube and an outer tube that surrounds the inner tube. Lhoste et al. does disclose the lead out tube comprises an inner tube – at 11,16, and an outer tube – at 10,14, that surrounds the inner tube – see figures 4 and 7. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Zobelet al. and add the inner and outer tubes of Lhoste et al., so as to selectively control the release of the chemical substance from the device.

### ***Response to Arguments***

4. Regarding claim 1, the Zobelet al. reference US 5095647 discloses applicant's newly added claim amendments in that Zobelet al. discloses a pest controller comprising a portable container – at C, holding a chemical substance therewithin – see column 5 lines 63-68 and column 6 lines 1-7, the container attachable to a user so as to follow movement of a user without the portable container having to be held by a user – see figures 1-4 where the container – at C, is of a size that can be placed in a backpack worn by a user, wherein the container comprises a substance exposing portion – at the top of C and at 14'' and at 20, for exposing the chemical

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substance held therein to atmospheric air – via item 14, and a cover – at 17 – see figures 1-3, for sealing the substance exposing portion – see figure 4, the chemical substance containing an active ingredient with a pest controlling effect – see column 5 lines 63-68 and column 6 lines 1-7, and the active ingredient being volatilizable at a normal atmospheric temperatures and as an incident of being exposed to atmospheric air – see figures 1-4 and column 5 lines 63-68 and column 6 lines 1-7.

### *Conclusion*

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890.

The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



DAVID PARSLEY  
PRIMARY EXAMINER